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Kagan - Forms [11]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	Personal (Partial), Address (Partial), Phone No. (Partial) (6 pages)	n.d.	P2, P6/b(6)
002. form	Interview of Proposed Presidential Sub-Cabinet Appointee (11 pages)	n.d.	P2, P5, P6/b(6)
003. form	ABA Personal Data Questionnaire (25 pages)	n.d.	P2, P5, P6/b(6)

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Kagan - Forms [11]

2009-1006-F

kh560

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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For your
reading pleasure.

Withdrawal/Redaction Marker

Clinton Library

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RR. Document will be reviewed upon request.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Elena Kagan

2. Address: List current place of residence and office address(es).

Home (as of 6/23/99): 44 Shepard Street, Apt. 2
Cambridge, MA 02138

Office (as of 7/6/99): Harvard Law School
412 Hauser Hall
Cambridge, MA 02138

3. Date and place of birth.

April 28, 1960; New York City.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Single.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Harvard Law School, 1983-86, J.D. (June 1986)
Worcester College, Oxford University, 1981-83, M.Phil. (June 1983)
Princeton University, 1977-81, A.B. (June 1981)

6. Employment Record: List (by year) all businesses or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment

7/99- : Visiting Professor, Harvard Law School, Cambridge, MA
1/97-6/99: Deputy Assistant to the President for Domestic Policy and Deputy
Director, Domestic Policy Council, Executive Office of the President,
Washington, D.C.
7/95-12/96: Associate Counsel to the President, Executive Office of the President,
Washington, D.C.
3/95-12/97: Professor, University of Chicago Law School, Chicago, IL
7/91-3/95: Assistant Professor, University of Chicago Law School, Chicago, IL

6/93-8/93: Special Counsel, U.S. Senate Judiciary Committee, Washington, D.C.
 2/89-6/91: Associate, Williams & Connolly, Washington, D.C.
 7/88-11/88: Researcher, Dukakis for President Committee, Boston, MA
 7/87-6/88: Law Clerk to Justice Thurgood Marshall, U.S. Supreme Court, Washington, D.C.
 7/86-6/87: Law Clerk to Judge Abner J. Mikva, U.S. Court of Appeals for the District of Columbia Circuit, Washington, D.C.
 6/86: Research Assistant to Professor Laurence Tribe, Harvard Law School, Cambridge, MA
 7/85: Summer Associate, Paul, Weiss, Rifkind, Wharton & Garrison, New York
 7/84-8/84: Summer Associate, Fried, Frank, Harris, Shriver & Jacobson, New York
 7/81-8/81: Paralegal, Milbank, Tweed, Hadley & McCloy, New York

Other

1993-95: Member, Board of Governors, Chicago Council of Lawyers

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest of the Committee.

University of Chicago Graduating Class of 1993 Award for Teaching Excellence
 J.D., magna cum laude
 Supervising Editor, Harvard Law Review
 Daniel M. Sachs Graduating Scholarship (provided to Princeton graduate for two years of study at Oxford)
 A. B., summa cum laude
 Phi Beta Kappa

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
 U.S. Association of Constitutional Lawyers
 ABA Forum on Communications Law, 1996-98
 Society of American Law Teachers, 1993-95
 Member, Board of Governors, Chicago Council of Lawyers, 1993-95
 Public Member, Administrative Conference of the United States, 1994-95

- 10: **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

As a result of charitable contributions, I am a member of the National Partnership for Women and Families, which I understand lobbies before public bodies. Also as a result of contributions, I am a member of the Princeton University Alumni Association and the Harvard Law School Alumni Association.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court for the District of Maryland, 7/13/90
United States District Court for the District of Columbia, 2/5/90
District of Columbia Court of Appeals, 2/17/89
New York State Court of Appeals, 7/19/88

12. **Published Writings:** List the title, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published materials not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The following lists of (1) published material, (2) speeches, seminars, and panel presentations, and (3) press briefings and interviews are based on my recollection and all available files. I believe the lists are complete, except for news stories and editorials I wrote during college while a staff member and the editorial chairman of The Daily Princetonian. I am providing copies of all the published materials listed below and all the notes or transcripts of the speeches and briefings listed below that I have been able to find.

Published Material

Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Analysis, 63 *University of Chicago Law Review* 413 (1996). See Tab 1.

When A Speech Code Is A Speech Code, 29 *University of California at Davis Law Review* 957 (1996). See Tab 2.

Confirmation Messes, Old and New (Book Review), 62 *University of Chicago Law Review* 919 (1995). See Tab 3.

The Changing Faces of First Amendment Neutrality, 1993 *Supreme Court Review* 29. See Tab 4.

Pornography and Hate Speech After *R.A.V. v. St. Paul*, 59 *University of Chicago Law Review* 873 (1993). See Tab 5. An abbreviated version of this article also appears in Laura Lederer and Richard Delgado, eds., *The Price We Pay* (Hill & Wang 1995). See Tab 6.

A Libel Story (Book Review), 17 *Law & Social Inquiry* 197 (1993). See Tab 7.

For Justice Marshall, 71 *Texas Law Review* 1125 (1993). See Tab 8.

Note, Certifying Classes and Subclasses in Title VII Suits, 99 *Harvard Law Review* 619 (1986). See Tab 9.

Speeches, Seminars, and Panel Presentations

As Deputy Assistant to the President for Domestic Policy, I occasionally gave briefings on the Administration's domestic policy to groups visiting the White House. I briefed lieutenant governors on education and tobacco issues (2/22/99), and I briefed women mayors on domestic policy issues generally (1/26/99). I also discussed domestic policy issues with students from New York City's Hunter College High School (1/7/98). It is possible that I did other, similar briefings or talks that do not appear on my calendar. I do not recall ever using notes for these briefings, and I have found none in my files.

Also while Deputy Assistant to the President, I gave one talk that was the product of my academic work at the University of Chicago and my experience as Special Counsel to the Judiciary Committee for the confirmation hearings of Justice Ginsburg:

(a) I gave this talk at a symposium at the Case Western Reserve Law School, entitled "Presidential Power in the 21st Century" (4/5/97). I spoke on a panel entitled "The Appointment Power," which focused on the roles of the President and Senate in making judicial appointments. I do not have notes for this talk and do not recall it well, but presume I made points similar to those made in the book review entitled "Confirmation Messes, Old and New" listed above.

During my tenure as Associate Counsel to the President, I made informal remarks to University of Chicago Law School alumni (5/16/96), Sidley & Austin summer associates (8/2/95), and Treasury Department lawyers (5/9/96) on the work of the White House Counsel's office. I do not recall using notes for these talks, and a search of my files has not uncovered any.

Also during my tenure as Associate Counsel, I gave two talks that were the product of my academic work at the University of Chicago:

(b) I made remarks at the 1995 Libel Conference of the Newspaper Association of America, National Association of Broadcasters, and Libel Defense Resource Center, entitled "New Media, New Torts, New Threats: Libel Defense in the Next Century" (9/21/95, McLean, Virginia). I am providing detailed notes for this speech, which focused on the response of First Amendment doctrine to technological change. See Tab 10. (I never in fact read from my notes when speaking, although often -- as in this case -- they are detailed enough to allow me to do so; my spoken remarks in such cases usually make the same substantive points as in the notes, but do not use much of the language.)

(c) I participated in a symposium at the University of California at Davis, entitled "Developments in Free Speech Doctrine: Charting the Nexus Between Speech and Religion, Abortion, and Equality" (2/16/96). I spoke on a panel entitled "Speech and Equality," where I critiqued a paper by Professor Thomas Grey entitled "How to Write a Speech Code Without Really Trying: Reflections on the Stanford Experience." My comments became the article "When A Speech Code Is A Speech Code" listed above. I also am providing detailed handwritten notes for the talk. See Tab 11.

During my tenure at the University of Chicago, I gave the following talks on constitutional and other legal issues:

(d) I participated in a symposium sponsored by the ABA Forum on Communications Law, entitled "Turner Broadcasting System, Inc. v. FCC: Exploring the Regulatory and Constitutional Ramifications" (4/28/95, Washington, D.C.). I spoke on a panel entitled "Implications for Constitutional Theory." I am providing detailed notes for this talk, which focused on constitutional review of speaker-based speech restrictions. See Tab 12.

(e) I participated in a conference at the University of Chicago Law School on gender and legal education (12/3/94). I do not know the exact title of this conference or the panel I was on, and I do not have notes for this talk. I recall that my main point was to rebut the argument that legal education, by its very nature, discriminates against women.

(f) I participated in a symposium sponsored by the University of Chicago Legal Forum, entitled "Voting Rights and Elections" (11/5/94). I spoke on a panel on "Race and Redistricting." I do not have any notes for this talk. I recall arguing that the Supreme Court's then-recent decision in Shaw v. Reno was relatively narrow (applying, I thought, not to all election districts in which race was a factor, but only to those that were oddly shaped) and that it might end up promoting racial integration of political institutions by prohibiting the kind of redistricting practices most likely to cause public backlash.

(g) I gave a "work-in-progress lunch" to faculty at the University of Chicago Law

School on the role of motive analysis in First Amendment doctrine (2/10/94). This talk ultimately became the article entitled “Private Speech, Public Purpose” listed above. I am providing detailed notes for this presentation. See Tab 13.

(h) I gave a “loop luncheon” talk to University of Chicago alumni entitled “The Supreme Court Confirmation Process From the Inside,” which focused on my experience as Special Counsel to the Senate Judiciary Committee for the confirmation hearings of Ruth Bader Ginsburg (11/15/93). I do not have notes for this talk, but the ideas in it eventually developed into the book review entitled “Confirmation Messes” listed above.

(i) I gave a talk to Chicago public high school teachers participating in the Andrew W. Mellon Foundation Project in Expanding Literacy at the University of Chicago, which described and posed questions about the branch of legal scholarship known as critical race theory (10/23/93). I am providing detailed notes for this talk. See Tab 14.

(j) I participated in a panel discussion on “Writers, Profanity, and Schools” in a program for teachers sponsored by the Illinois Humanities Council as part of the annual Chicago Humanities Festival (10/16/93). I am providing detailed handwritten notes for this talk, which discussed a Supreme Court case involving a school board’s decision to remove books from a school library. See Tab 15.

(k) I participated in a symposium entitled “Politicized Education and Its Discontents” sponsored by the Chicago Humanities Institute and the University of Chicago’s Collegiate and Humanities Divisions (5/15/93). I do not have any notes for this talk, but I recall that my remarks concerned hate speech at universities and were similar to those I made at a conference on March 6, 1993 (see below), which eventually became the article “Pornography and Hate Speech after R.A.V. v. St. Paul” listed above. To some extent, the remarks also anticipated my subsequent article “When A Speech Code Is A Speech Code” listed above.

(l) I gave a faculty workshop at the St. Louis University Law School on the article “The Changing Faces of First Amendment Neutrality” listed above (4/23/93). I do not have any notes for this talk, but I recall that it essentially summarized the article.

(m) I participated in a symposium at the University of Chicago Law School, entitled “Speech, Equality, and Harm: Feminist Legal Perspectives on Pornography and Hate Propaganda” (3/6/93). I spoke in a “Roundtable Discussion on Freedom of Discussion.” I do not have any notes for this talk, but my remarks formed the foundation of my article “Pornography and Hate Speech after R.A.V. v. St. Paul” listed above.

(n) I gave a “loop luncheon” talk to University of Chicago alumni on clerking for Justice Marshall (2/11/93). I do not have any notes for this talk, but it eventually

became the memoriam "For Justice Marshall" listed above.

(o) I moderated a panel in a symposium entitled "A Free and Responsible Press," sponsored by the University of Chicago Legal Forum (10/10/92). I have no notes for this session and assume I did little more than introduce the panelists.

(p) I gave a talk to the visiting committee (a group of distinguished alumni) of the University of Chicago Law School sometime in the fall of 1992. I am providing detailed notes for this talk, which focused on the current state of legal education, both at Chicago and elsewhere. See Tab 16.

In addition to the above presentations, I gave a number of talks to students or prospective students during the time I was a law professor at the University of Chicago. Some of these talks involved career options or legal education. Others involved substantive legal issues; I recall, for example, participating twice in a faculty panel discussing a current legal issue before an audience of college students recently admitted to the Law School. I do not have any notes for these discussions. At the request of the Law School's Dean of Admissions, I prepared a written version, for use in the Law School's admissions materials, of remarks I made on an occasion of this kind; I am providing this page of the admissions materials. See Tab 17.

Press Briefings and Interviews

As Deputy Assistant to the President for Domestic Policy, I gave press briefings on: the progress of welfare reform (5/27/98, with Secretary Donna Shalala and Eli Segal); tobacco use and proposed tobacco legislation (2/13/98, with General Barry McCaffrey and 3/9/98, with Chris Jennings); and the White House Conference on Hate Crimes (11/7/97, with Maria Echaveste). I also participated in an on-line interview on a variety of subjects conducted by MS-NBC (3/2/99). I am providing transcripts of these briefings and interviews. See Tabs 18-22. In addition, I regularly talked with reporters about subjects such as tobacco and welfare policy.

As a Professor of Law at the University of Chicago, I appeared at least twice on the Mara Tapp show on WBEZ, Chicago's public radio station. I discussed Justice Marshall soon after his death (2/4/93) and participated in a roundtable on the Bill of Rights (12/15/94). I also may have participated in a discussion of the Supreme Court on WGN in Chicago (10/25/94); my calendar contains a reference to this show, but I do not recall it. I tried to get audiotapes or transcripts of all these shows, but WBEZ and WGN apparently do not keep tapes this long.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

P6/(b)(6)

P6/(b)(6)

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgement was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1/97-5/99: Deputy Assistant to the President for Domestic Policy and Deputy Director, Domestic Policy Council, Executive Office of the President, Washington, D.C. (appointed)
7/95-12/96: Associate Counsel to the President, Executive Office of the President, Washington, D.C. (appointed)
6/93-8/93: Special Counsel, U.S. Senate Judiciary Committee, Washington, D.C. (appointed)

I have never been a candidate for elective public office.

17. **Legal Career:**

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the

court, and the dates of the period you were a clerk;

Hon. Thurgood Marshall, United States Supreme Court, 1987-88.

Hon. Abner J. Mikva, United States Court of Appeals for the District of Columbia, 1986-87.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Harvard Law School, Cambridge, MA 02138
Visiting Professor, July 1999-.

Executive Office of the President, White House, Washington, D.C. 20502
Deputy Assistant to the President for Domestic Policy and Deputy Director,
Domestic Policy Council, 1997-99.
Associate Counsel to the President, 1995-96.

University of Chicago Law School, 1111 E. 60th Street, Chicago, IL 60637
Professor, 1995-97.
Assistant Professor, 1991-95.

Senate Judiciary Committee, 224 Dirksen Building, Washington, D.C. 20510
Special Counsel, June-August 1993.

Williams & Connolly, 725 12th Street N.W., Washington, D.C. 20005
Associate, 1989-91.

Presidential Campaign of Michael Dukakis, 105 Chauncy St., Boston, MA
Researcher, 7/88-11/88.

Professor Laurence Tribe, Harvard Law School, Cambridge, MA 02138
Research Assistant, June 1986.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My career as a lawyer (following two years of clerking) can be divided into three parts: the first, from 1989 to 1991, as an associate at a major Washington law firm; the second, from 1991 to 1995, as a scholar and teacher specializing in

First Amendment and other constitutional law; and the third, from 1995 to the present, as a government official engaged in both policy making and legal activity. In July, I am returning to academia, where I will teach and write about constitutional and administrative law. If I am fortunate enough to become a judge, I will bring this combination of scholarly and practical interests and experiences to the task of appellate judging.

As an associate at Williams & Connolly in Washington, D.C., I spent about one-third of my time on business litigation, one-third on criminal matters, and one-third on First Amendment litigation for various press entities. My work was principally at the district court level, but I also drafted several appellate briefs. I list cases from this part of my legal career in my response to question 18.

I taught at the University of Chicago Law School between 1991 and 1995, first as an Assistant Professor and then as a full Professor with tenure; I took a leave in 1995 to work in government and resigned my position in 1997 in accordance with a university regulation limiting leaves to two years. While at Chicago, I taught classes in Constitutional Law, Labor Law, and Civil Procedure; I also taught seminars in Rights of Political Participation (principally dealing with voting rights and campaign finance issues) and Supreme Court Litigation (in which nine students role-played as the Court for a semester). At Harvard next year, I plan to teach Constitutional Law, Administrative Law, and a seminar in the Presidency and the Law.

My scholarship at Chicago focused on the Free Speech Clause of the First Amendment. In my first article, *The Changing Faces of First Amendment Neutrality*, I took two important First Amendment decisions of the 1990s, *Rust v. Sullivan* and *R.A.V. v. St. Paul*, and attempted to show their analytic connections; in the course of doing so, I hoped to shed some light on the question of how neutrality principles function in First Amendment case law. In my most ambitious piece, *Private Speech, Public Purpose*, I offered a general theory of the First Amendment, arguing that most of the case law can be understood as an effort by the Court to ferret out and invalidate governmental actions based on improper motive. I am not sure whether this article is right on all counts, but I think it aids understanding of the field by combining an interest in First Amendment theory with close attention to the details of doctrine. I believe that the doctrinal basis of my scholarship makes it helpful to judges and lawyers, and that the often intricate legal analysis in the work comes close (or at any rate, as close as scholarship can) to the practice of appellate judging.

Among those who know my scholarship well are Richard Fallon of Harvard, Michael McConnell of the University of Utah, and Geoffrey Stone of the University of Chicago. I have provided their addresses and phone numbers, along with the names of several other people who knew me well at the University of Chicago, in my response to question 18.

While I was at the University of Chicago, I spent one summer in Washington, D.C., helping Senator Joseph Biden, then the Chairman of the Senate Judiciary Committee, prepare for the confirmation hearings of Ruth Bader Ginsburg. During the next two years, I continued work on judicial selection, as a participant in the Chicago Council of Lawyers' extensive process for evaluating and rating candidates for elective judicial office.

The third and most recent part of my career itself had two parts -- the first in the White House Counsel's office, the second in the Domestic Policy Council. In the Counsel's Office, I primarily acted as a lawyer for the White House policy councils and legislative office. Depending on the issue, I analyzed or drafted statutory language, devised executive actions consistent with governing law, and occasionally (principally on law reform issues) offered policy advice. Among the issues to which I devoted most time were welfare reform and campaign finance reform. I also provided constitutional advice, in a variety of contexts, on these and other issues, including separation of powers, governmental privileges, freedom of speech, and church-state relations. One of the projects to which I devoted substantial time was a set of guidelines issued by the President on religious exercise and expression in the federal workplace.

As Deputy Director of the Domestic Policy Council, I continue to perform most of these functions, and combine them with responsibility for policy development. Last year, I played the principal role in handling the myriad First Amendment and other constitutional issues arising from the proposed tobacco settlement, as well as in developing the Administration's statutory proposal for giving the FDA clear regulatory authority over tobacco products. More recently, I have devoted much time to developing the Administration's reauthorization proposal for the Elementary and Secondary Education Act. As a result of these and many other experiences, I know a fair amount about both legislative and administrative processes; this knowledge, combined with my academic background and litigation training, will serve me well in considering the constitutional, statutory, and regulatory issues that form the core of the D.C. Circuit's caseload.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As noted in part (b)(1) of this question, clients for whom I worked during my years as an associate in a law firm included business entities in civil litigation, press organizations defending themselves in libel and related actions, and white collar criminal defendants.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court occasionally between 1989 and 1991, when I worked as an associate at Williams & Connolly. I have not appeared in court at all since then.

2. **What percentage of these appearances was in:**
(a) federal courts;
(b) state courts of record;
(c) other courts.

Almost all (about 90 percent) of my appearances were in federal court.

3. **What percentage of your litigation was:**
(a) civil;
(b) criminal.

All of my appearances were in civil litigation, although criminal litigation occupied about one-third of my time at the law firm.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I have never tried a case to verdict or judgment.

5. **What percentage of these trials was:**
(a) jury;
(b) non-jury.

Not applicable; see above.

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The following ten cases are representative of my litigation experience as an associate at Williams & Connolly between 1989 and 1991. Because the cases are now almost ten years old and because in some of the cases, the partner handled contacts with opposing

counsel, I suspect that a number of the opposing counsel listed will not remember me. This will certainly be true of the appellate cases listed, where my principal job was to draft the briefs we submitted.

(a) Federal Realty Investment Trust v. Pacific Insurance Co., No. R-88-3658. We represented a real estate investment trust in an action against an insurer for the costs of defense associated with a prior litigation. I began work on the case in the middle of the litigation; I did some late discovery and drafted most of the pre-trial motions. On the eve of trial, Judge Norman Ramsey of the U.S. District Court for the District of Maryland ruled in favor of our position on the appropriate standard for allocating defense costs between covered and uncovered parties and claims (760 F. Supp. 533 (1991)). This ruling immediately produced a settlement favorable to our client.

Co-Counsel:

Paul Martin Wolff
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(b) In re Seatrain Lines, Inc., Nos. 81 B 10311, 81 B 10916, 81 B 11059, 81 B 12345, 81

B 12525, 81 B 11845, 81 B 11004, 81 B 11512. We represented Seatrain Lines, Inc., a debtor in bankruptcy, in U.S. Bankruptcy Court in the Southern District of New York (Judge Burton Lifland presiding) in connection with an application by Chase Manhattan Bank and Milbank, Tweed, Hadley & McCloy for legal fees associated with the bankruptcy case. In response to the filing of the fee application, our client counterclaimed against Chase for the recovery of the costs of preserving and disposing of certain properties subject to Chase's security interest. I handled some of the discovery and drafted most of the pleadings. When the court denied Chase's motion to strike our counterclaim (and a subsequent motion for reconsideration), the parties settled on terms favorable to our client.

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(c) Toyota of Florence, Inc. v. Lynch, Nos. 4-89-594-15, 4-89-595-15. We represented Southeast Toyota Distributors, Inc. in a suit brought by one of its franchisees alleging fraud, intentional interference with contract, violations of RICO, and a host of other claims. I drafted numerous pleadings in the case, including an opposition to the plaintiff's motion to remand (granted by Judge Hamilton of the U.S. District Court for South Carolina at 713 F. Supp. 898 (1989)), as well as motions to dismiss and discovery motions (ruled on by Judge Edwin Cottingham of the Court of Common Pleas for Darlington County). I also handled some of the discovery. I left the firm prior to trial. Ultimately, a verdict for the plaintiff was dismissed on appeal.

Co-Counsel:

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Darlington, South Carolina
No telephone number listed

(d) Byrd v. Randi, No. MJG-89-636. We represented defendant Montcalm Publishing Corp. in a libel action arising from an allegation that the plaintiff was in prison for child molestation. The case presented important issues relating to the "libel-proof plaintiff" doctrine, the definition of a "limited purpose public figure," and the actual malice standard. I did most of the discovery, drafted our summary judgment motion and other pleadings, and argued the summary judgment motion before the district court. After initially denying the motion, Judge Marvin Garbis of the U.S. District Court for the

District of Maryland dismissed the case a few months later on a motion for reconsideration.

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(e) In Re Application of News World Communications, Inc., Nos. 89-3160, 89-212. We represented the Washington Post and WRC-TV in this effort to compel release to the public of unredacted transcripts of audiotapes to be received in evidence at a criminal trial. (The underlying trial, United States v. Edmond, was a major local news story in Washington.) I argued motions before Judge Charles Richey of the U.S. District Court for the District of Columbia to compel release of the transcripts and to prevent redaction. (During my time at Williams & Connolly, I argued a number of these access motions for the Post and other media entities, as well as a number of motions to quash subpoenas on reporters for notes or testimony.) Judge Richey granted both motions, with the latter reported at 17 Media L. Rep. 1001 (1989). The Court of Appeals for the D.C. Circuit, with Judges Wald, Silberman, and Sentelle hearing argument, denied a motion to stay this order (17 Media L. Rep. 1004 (1989)).

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(f) J. Odell Anders v. Newsweek, Inc., No. 90-715. We represented Newsweek, Inc. on appeal from a jury verdict in its favor in a libel action filed in the Southern District of Mississippi. The case raised questions about the actual malice standard, as well as numerous evidentiary issues. I drafted the appellate brief urging affirmance. The U.S. Court of Appeals for the Fifth Circuit held in our favor by unpublished opinion (judgment reported at 949 F.2d 1159 (1991)).

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(g) Luke Records, Inc. v. Nick Navarro, No. 90-5508. We filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit on behalf of the Recording Industry Association of America and numerous record companies, challenging the decision of the district court that a musical recording was obscene under the standard set forth by the Supreme Court in Miller v. California. I drafted the brief in the case, which stressed the difficulty of holding music obscene under prevailing constitutional law. Judge Lively, joined by Judges Anderson and Roney, reversed the district court's decision (960 F.2d 134 (1992)).

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(h) Bagbey v. National Enquirer, No. CV 89-2177. We represented the National Enquirer in this small libel action brought by a person mistakenly identified in the publication as being Jimmy Swaggert's father. I drafted all pleadings and did all discovery in the case, which began in Louisiana state court but which we removed to the U.S. District Court for the Western District of Louisiana (Judge F.A. Little, Jr.). We eventually settled the case on terms favorable to our client.

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Opposing Counsel:

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(i) Chuang v. United States, Nos. 89-1309. We represented Joseph Chuang, a former bank president, on his appeal from a criminal conviction for numerous counts of bank fraud. The principal issues in the case concerned the propriety of two warrantless searches of the bank, one by the Office of the Comptroller of the Currency and one by the FDIC. I drafted most sections of the brief, which argued among other matters (1) that the statute authorizing the OCC's search failed to provide a constitutionally adequate substitute for a warrant, as required by the Supreme Court, and (2) that the FDIC's search was invalid because it went beyond the bank premises into Chuang's law firm offices. The Second Circuit affirmed the conviction, with Judge Timbers writing and Judges Newman and Altimari joining (897 F.2d 646 (1990)).

Co-Counsel:

Robert S. Litt

P6/(b)(6)

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Opposing Counsel:

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(j) United States v. Jarrett Woods. We represented the former head of the Western Savings Association, a failed savings and loan, in both a grand jury investigation and a number of civil suits brought against him. The Federal Home Loan Bank Board had declared the S&L insolvent and placed it in receivership after discovering various suspect real estate loans. In addition to trying to keep the civil suits at bay, we tracked the grand jury investigation of Woods closely for more than a year -- interviewing each of the many people brought before the grand jury -- before Woods became unable to afford the representation. Woods was subsequently indicted and convicted of numerous counts of bank fraud.

Co-Counsel:

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Because each of the above ten cases is eight to ten years old, I am listing below members of the legal community with whom I worked while at the University of Chicago or the White House.

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American Jewish Congress
Stephen Wise Congress House
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19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Governmental Work. My work in the Counsel to the President's Office -- and much of my work in the Domestic Policy Council -- involved significant legal activities not involving litigation. Below are three examples:

(i) Tobacco. I led the Administration's inter-agency effort to analyze all legal and regulatory aspects of the tobacco settlement proposed in June 1997. The working groups I chaired considered the settlement's provisions on FDA jurisdiction, liability relief, and antitrust exemptions. These groups also considered all constitutional challenges that could be brought to the proposed legislation and settlement agreement. When the Senate took up tobacco legislation the next year, I took part at various stages in the legislative process in discussions and negotiations about the content of the legislation. I again focused on the bill's regulatory and legal aspects.

(ii) Welfare Reform. I worked extensively on welfare reform issues in both the Counsel's Office and the Domestic Policy Council. In the Counsel's Office, prior to passage of the welfare law, I provided legal advice on waivers and other executive actions to accomplish welfare reform. I helped prepare, for example, an executive directive requiring every participant in the then-existing JOBS program to commit to working within two years or face sanctions; similarly, I worked on directives to strengthen efforts to enforce federal child support laws and to keep teen-age mothers on welfare in school. After Congress passed but before the President signed the welfare law, I provided advice on the constitutionality of certain provisions. Finally, as Deputy of the Domestic Policy Council, I participated in numerous aspects of the law's implementation, including the development of a major rule that elucidates the law's many complex provisions.

(iii) Guidelines on Religious Expression in the Workplace. While in the Counsel's office, I helped to prepare "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace." These detailed guidelines, developed in conjunction with representatives of the Christian Legal Society, American Jewish Congress, and People for the American Way, enunciated three broad principles: that federal employers should permit employees to engage in personal religious expression to the greatest extent possible; that federal employers may not discriminate in employment on the basis of religion; and that federal employers must reasonably accommodate employees' religious practices. Making these guidelines acceptable to a wide-ranging coalition of religious groups, the Department of Justice, the Equal Employment Opportunity Commission, the Office of Personnel Management, and every other federal employer was as difficult a project as any I have encountered in government.

Judicial Evaluation Activities. I served as Special Counsel to the Senate Judiciary Committee for the confirmation hearings of Ruth Bader Ginsburg in the summer of 1993. In that capacity, I helped Senator Biden, then the Chairman of the Committee, prepare for the hearings by briefing him on the nominee's judicial record and philosophy and on recent developments and debates in constitutional law.

Between 1993 and 1995, I participated actively in the Chicago Council of Lawyers' process for evaluating and rating candidates for elective judicial office. I vetted some candidates myself, and as a member of the Board of Governors, discussed and voted on the ratings given to all candidates.

Scholarship and Teaching. My scholarly work has focused on First Amendment law. At the University of Chicago Law School, I taught two Constitutional Law courses (one on the First Amendment and the other on the Equal Protection and Due Process Clauses of the Fourteenth Amendment), Labor Law, and Civil Procedure. I also taught seminars on Supreme Court Litigation and Rights of Political Participation. At Harvard next year, I will teach the general course on Constitutional Law, Administrative Law, and a seminar on The Presidency and the Law.

Administrative Conference. I was a Public Member of the Administrative Conference of the United States from 1994 to 1995. The Conference brought together judges, academics, and general counsels of administrative agencies to examine how to improve the functioning of administrative agencies.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

- 1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I participate in the University of Chicago Retirement Plan and the U.S. Government (Thrift Savings) Plan. I expect to receive income from these plans in 2025, when I turn 65.

- 2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will resolve all potential conflicts of interest in accordance with the Code of Judicial Conduct. I am unlikely to have many conflicts of interest stemming from financial arrangements. All my assets are in mutual funds, except for two blocks of stock that I recently inherited and intend to sell. I am more likely to have potential conflicts stemming from my previous governmental employment. I would adhere strictly to Canon 3(C)(1)(e) with respect to such questions, and also would be alert to other situations -- for example, involving litigation brought by or against the current Administration -- that might present an actual or apparent conflict of interest.

- 3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain:**

I do not now have any such plans, although I could decide to do some teaching.

- 4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See financial disclosure report attached.

- 5. Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached statement and schedules.

- 6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Yes. Between July and November 1988, I worked as a researcher for the Dukakis for President campaign. I was a junior staffer and do not believe I had an official title. I mostly worked on "defense research" -- i.e., preparing responses to attacks on Governor Dukakis's record. In addition, I played a small role in debate preparation for President Clinton during the 1996 campaign. I did this work (mostly preparing questions and answers) after hours and in accordance with the law addressing political activity of White House employees.

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank account, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		\$15,	000	Notes payable to banks - secured			0
U.S. Govt securities - add schedule			0	Notes payable to banks - unsecured			0
Listed securities - add schedule		\$9,	890	Notes payable to relatives			0
Unlisted securities - add schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid tax and interest			0
Doubtful			0	Real estate mortgages payable - add schedule			0
Real estate owned - add schedule			0	Chattel mortgages and other liens pay-able			0
Real estate mortgages receivable			0	Other debts - itemize:			0
Autos and other personal property		\$10,	000				
Cash value - life insurance			0				
Other assets - itemize:							
mutual funds -- see schedule		\$187,	694				
retirement plans -- see schedule		\$153,	340				
				Total liabilities			0
				Net Worth		\$375,	924
Total Assets		\$375,	924	Total liabilities and net worth		\$375,	924
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			No	Are any assets pledged? (Add schedule.)			No
On leases or contracts			No	Are you defendant in any suits or legal actions?			No
Legal Claims			No	Have you ever taken bankruptcy?			No
Provision for Federal Income Tax			No				
Other special debt			No				

Schedule -- Listed Securities (valued as of 5/24/99)

173 shares of Bell Atlantic Corp.	\$9,601.50
Nine shares of General American Investors Co., Inc.	\$288.00

Schedule -- Other Assets -- Mutual Funds (valued as of 5/24/99)

Chase Vista Capital Growth Fund	\$19,619.37
Chase Vista Growth and Income Fund	\$22,998.86
Crabbe Huson Special Fund	\$ 8,820.53
Janus Fund	\$28,922.26
Janus Mercury Fund	\$38,624.73
Mutual Beacon Fund	\$22,115.41
T. Rowe Price International Stock Fund	\$11,073.96
Tweedy Browne Global Value Fund	\$15,179.31
Vanguard Fixed Income Fund -- GNMA Port.	\$10,827.52
Vanguard Municipal Bond Fund -- Int. Term	\$ 9,511.85
Total:	\$187,693.80

Schedule -- Other Assets -- Retirement Plans (valued as of 3/31/99 for Univ. of Chicago and 4/30/99 for TSP)

University of Chicago Retirement Plan (funds invested in TIAA, CREF Stock, CREF Bond Market, Vanguard Windsor Fund, Vanguard Explorer Fund)	\$84,584
Thrift Savings Plan (funds invested in Government Securities Investment Fund, Fixed Income Index Investment Fund, Common Stock Index Investment Fund)	\$68,756
Total:	\$153,340

II. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

Between 1993 and 1995, I served as a member of the Board of Governors of the Chicago Council of Lawyers, one of whose principal objectives is to ensure that the legal system serves the disadvantaged. I attended regular meetings of the Board and also participated in various Board-sponsored projects, such as the evaluation and rating of candidates for elective judicial office. While in Chicago, I also provided pro bono assistance to an attorney filing a petition for certiorari in a voting rights case (African American Voting Rights Legal Defense Fund v. Villa). Finally, I note here, although it did not involve work for the disadvantaged, that I served for about nine months between 1994 and 1995 as pro bono counsel to the Bulletin of Atomic Scientists, a non-profit organization; in this capacity, I did 10 or fewer hours of legal work, relating to a small legacy to the organization.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that individually discriminates on the basis of race, sex, or religion. Do you currently belong, or have belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

As far as I am aware, there is no selection commission in the District of Columbia to recommend candidates for nomination to the U.S. Court of Appeals for the District of Columbia Circuit. I discussed my interest in this vacancy, as well as my background and qualifications, with various members of the White House staff, principally in late 1998. I was informed in late March 1999 that a decision had been made to send my name to the FBI and ABA for evaluation. I was informed in June 1999 that a decision had been made to send my nomination to the Senate.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving “judicial activism.”**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this “judicial activism” have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Judges must approach their job with an understanding of its proper limits and a commitment not to usurp the prerogatives of more democratically accountable institutions. Judges have a responsibility to focus on the cases before them and to answer the questions presented there (and only those questions) in accordance with governing law. They should be predisposed in all cases to proceed incrementally and speak narrowly; they should leave undecided any questions not necessary to the resolution of a case or more appropriately considered by the people and their elected representatives in the States or Congress. Perhaps most important, judges should have a strong sense of the judicial branch’s limitations -- of its capacity to make mistakes and produce unintended consequences and of its distinctive inability to speak for, or in a way that is accountable to, the American public.

These principles explain a broad set of doctrines rightly fundamental to the American judicial system: that courts should refuse to hear cases when a controversy is moot or when it has not sufficiently ripened for decision; that they should refuse to hear cases brought by a person with no real stake in the controversy; that they should avoid deciding constitutional questions; that they should not issue advisory opinions; and that they should be highly protective of their own precedents. A strong view of these doctrines appropriately limits the role of the judiciary and assists in preventing undue incursions into the sphere of democratically responsible institutions.

IV. ~~CONFIDENTIAL~~

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: Py DATE: 5/25/10

P6(b)(6)

P6/(b)(6)

P6/(b)(6)

AFFIDAVIT

I, _____ do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

(DATE)

(NAME)

(NOTARY)

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. form	Interview of Proposed Presidential Sub-Cabinet Appointee (11 pages)	n.d.	P2, P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Sarah Wilson
OA/Box Number: 14688

FOLDER TITLE:

Kagan - Forms [11]

2009-1006-F
kh560

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. form	ABA Personal Data Questionnaire (25 pages)	n.d.	P2, P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Sarah Wilson
OA/Box Number: 14688

FOLDER TITLE:

Kagan - Forms [11]

2009-1006-F
kh560

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]